

the size of the federal funding requirement.²⁵ For example, a rural, high cost state, such as Alaska or Wyoming, would be required to develop a source of funding for its state program solely from intrastate sources. In the case of Wyoming, the revenues attributable to providing intrastate services to fewer than 300,000 subscribers, would have to be the basis for supporting the state high cost program.²⁶ Such a burden on a small subscriber base clearly would be contrary to the principles of the Telecommunications Act.

If both inter- and intrastate revenues are used to determine the federal funding base, the states should also assess inter- and intrastate revenues. Any concerns that states may not have the authority to assess interstate revenues may have been assuaged by the U.S. Supreme Court in Goldberg v. Sweet, 488 US 252 (1989). In that case, the Supreme Court upheld a state excise tax imposed on the gross charges of interstate telecommunications originated or terminated in the state. The Court found that such a tax would not violate the Commerce Clause of the Constitution if: 1) the tax is applied to an activity with a substantial nexus with the taxing state; 2) the tax is fairly apportioned; 3) the tax does not discriminate against interstate commerce by allocating a larger share of its burden to interstate calls; and, 4) the tax is fairly related to services which the state provides to the benefit of taxpayers.

The Joint Board also recommends that if the Commission assesses both inter- and intrastate revenues as the basis for contributions to the universal service funding mechanism, the Commission should make a downward adjustment in the subscriber line charge (SLC) cap for

²⁵See, Comments of GTE, CC Docket No. 96-45, April 12, 1996 at Appendix B.

²⁶See, NECA Annual USF Submission, October 1, 1996.

primary residential and single-line business lines, as well as CCL charges to reflect the recovery of long term support (LTS) and pay telephone costs from other sources. USTA strongly agrees with the dissenting opinion of Commissioner Chong that to reduce the SLC is bad economic policy that contradicts the Commission's long standing goal to promote economic efficiency and cost causation. "The SLC is a non-traffic sensitive charge that recovers non-traffic sensitive costs in the most economically efficient manner from end users. Any policy that, in essence shifts or perpetuates the recovery of these costs from interstate providers can, at best, be described as an inefficient 'shell game' on consumers....Any potential savings that consumers would receive from a SLC reduction on the local phone bills may well be offset by an increase to their long distance bills".²⁷

This recommendation is not supported by any economic rationale. It has no relationship to the assessment of contributions for universal service. As will be discussed below, the Commission should ensure that costs are properly recovered from the cost causer and should adopt the Joint Board suggestion that the current usage-sensitive CCL charge structure is economically inefficient and should be changed so that LECs are no longer required to recover the NTS portion of the loop from interexchange carriers on a traffic sensitive basis.²⁸

²⁷Separate Statement of FCC Commissioner Rachelle B. Chong at 11.

²⁸Recommended Decision at ¶ 754.

IV. RECOVERY OF COMMON LINE COSTS SHOULD BE ACCOMPLISHED IN THE MOST ECONOMICALLY EFFICIENT MANNER POSSIBLE.

As Commissioner Chong observes, the Commission and the Joint Board have a long standing commitment to ensuring the economically efficient recovery of common line costs. In 1987, for example, the Commission asked the Joint Board to examine the effects of the subscriber line charge which the Commission had implemented to recover a major portion of common line costs, specifically loop costs, that were allocated to the interstate jurisdiction. The Joint Board concluded that implementation of subscriber line charges,

has permitted the more rational recovery of NTS costs and has increased the economically efficient use of the public switched network. Specifically, the Joint Board found that the implementation of subscriber line charges has reduced switched access and interstate long distance rates, which, in turn, has generated substantial increases in interstate long distance calling. The Joint Board also stated that the economic benefits generated by subscriber line charges extend beyond the telecommunications sector, bringing a wide range of indirect economic benefits to the nation, including reduced overall price levels and increased employment.

The Joint Board further concluded that implementation of subscriber line charges has substantially reduced the extent of pricing discrimination between switched and special access service by moving switched access prices closer to the true economic cost of providing the service. This reduction in the loading of loop costs onto switched access service rates, the Joint Board concluded, will help reduce the threat of uneconomic bypass.”²⁹

There is no evidence on the record that would justify decreasing the SLC. In fact, the opposite is true.

²⁹MTS and WATS Market Structure, Amendment of Part 67 of the Commission’s Rules and Establishment of a Joint Board, CC Docket No. 78-72, 80-286, Report and Order, 2 FCC Rcd 2953, 2954 (1987).

Economists have long realized that significant gains in economic efficiency would occur if telephone prices were more cost-based and if the cross subsidy for basic residential access were reduced or eliminated...

Indeed, the evidence from the period after the breakup of AT&T during the 1980's tends to show that increased penetration resulted in part from the combined effect of higher monthly basic access charges and lower long distance prices. Further efficiency gains are likely to arise if the procedure continues to eliminate the cross subsidy received by basic exchange access and if long distance prices are lowered. These changes can come about in either (or both) of two ways. State PUC can allow LECs to change their pricing structures... In addition, the FCC could raise the residential subscriber line charge and lower interstate long distance access charges...However, the current combination of federal and state policy toward regulation of telephone service in the United States has an efficiency loss in the billions of dollars and retards the advancement of the "Information Age" which many individuals believe will increase productivity and lead to many new services for telephone consumers.³⁰

By adopting policies that move rates closer to economic costs, the amount of universal service support required will be reduced. As noted above, in order to better accommodate a competitive marketplace, "economic efficiency requires recovering costs of all services -- including universal services -- from the causers of those costs to the greatest extent possible. Hence, NTS costs should be recovered from end-users on a flat-rate basis to the greatest extent possible."³¹

Until the Commission implements the policies described above, the Commission should adopt the Joint Board suggestion that incumbent LECs be permitted to recover CCL costs from

³⁰Jerry Hausman, Timothy Tardiff and Alexander Belinfante, "The Effects of the Breakup of AT&T on Telephone Penetration in the United States", AEA Papers and Proceedings, May 1993, at 183-184.

³¹Kenneth Gordon and William E. Taylor, "Comments on Universal Service", Comments of BellSouth Corporation, CC Docket No. 96-45, April 12, 1996.

interexchange carriers on a per-line basis and to deaverage those costs over a smaller geographic area.

V. UNIVERSAL SERVICE CONTRIBUTIONS SHOULD BE RECOVERED THROUGH A SURCHARGE TO ENSURE THAT RECOVERY IS EXPLICIT, SUFFICIENT AND PREDICTABLE.

The Joint Board did not specifically address how universal service contributions should be recovered, although some Joint Board members have stated publicly that telecommunications companies should contribute money to the fund from their own revenues. Of course telecommunications company revenues come from customers. And, new entrants are not prevented from passing the costs of contributions along to their customers. As noted above, telecommunications carriers must be allowed to recover all the costs of any regulatory obligation to avoid a regulatory takings and to ensure that revenues are also available to continue to maintain and build telecommunications infrastructure. Funding for universal service should be recovered by all telecommunications carriers through a surcharge on the customer bill based on that customer's telecommunications purchases.

As Commissioner Laska Schoenfelder stated in a separate statement, "I would also like to express my reservations about not providing explicit notification on customers' bills about the charges assessed to fund these programs. Consumers are entitled to be made aware of the charges that they are paying to support the recommendations made herein."³² Since, overall, prices should be reduced by the amount of the surcharge, there will be no net effect on

³²Separate State of Commissioner Laska Schoenfelder Dissenting in Part at 7.

customers. Several states have successfully implemented such a surcharge. Again, the statute requires that the implicit funding characteristic of a regulated monopoly environment be replaced by an explicit mechanism which is competitively neutral. Such a surcharge will ensure that the funding mechanism is explicit, specific, sufficient and predictable, as required by the Act.

A customer surcharge should also be used to recover the contributions necessary to fund the provision of universal service to schools, libraries and rural health care providers. These costs are new costs and customers should also be aware of the amount of support needed to provide the services mandated by Congress.

VI. THE COMMISSION SHOULD SPECIFY THE TERMS AND CONDITIONS OF ELIGIBILITY TO ENSURE COMPETITIVE NEUTRALITY.

The Joint Board concluded that no further guidelines were necessary to determine eligibility to receive universal service support, simply stating that any carrier willing to offer universal service throughout an area can receive support. This alone will not ensure competitively neutrality. Incumbent LECs have committed to carrier of last resort obligations, price regulation, as well as service quality and provisioning requirements. Unless other carriers make the same commitment, their provision of universal service will be an illusory promise. Regulators will not be able to ensure affordable rates or the preservation of universal service.

Therefore, the Commission must specify that all telecommunications carriers seeking to receive support must meet any requirements imposed at the state or federal level with respect to pricing, terms, conditions, provisioning and quality standards. These requirements should be the same for any carrier seeking to receive support. For example, all eligible telecommunications

carriers must be required to offer a stand-alone price for the universal service package. This price should represent the maximum amount charged for the defined services in order to qualify for eligibility. Such a requirement is necessary to ensure the availability of the defined services at an affordable price. It will deter competitors from continuing to cream skim only high volume customers through packaging the defined universal service set with other services. Competitive markets should operate under competitively neutral requirements. It does not make sense for a carrier with an extensive set of requirements to receive the same amount of support as a carrier with less requirements. Such an outcome is not competitively neutral.

Further, the Commission should clarify under what circumstances resellers may be eligible for support. For example, consistent with the statute, a telecommunications carrier that offers universal service *solely* through resale of another carrier's universal service package should not be eligible for support.³³ A carrier that uses a combination of its own facilities and resale to provide the universal service package should only receive support for the portion provided through its own facilities since the reseller receives a discount on the resold services from the underlying carrier.³⁴ The underlying carrier should receive support for the resold

³³Recommended Decision at ¶ 160.

³⁴The price being discounted is already based on the level of support being received by the underlying carrier. To shift the support to the reseller in this instance, would create a perverse incentive to resell services in high cost areas. For example, if an incumbent LEC's monthly costs of over \$36.00 per line entitled it to \$20.00 in support and it charged a retail price of \$16.00 per month, the reseller could obtain the service at a discounted rate of \$12.80 (with a 20 percent discount). Conceivably, the reseller could provide "free" local service, receive \$20.00 per line in support for every residential subscriber it serves and net \$7.20 (the difference between the support and its "costs") for each. Since, it has no revenues associated with these services it has no obligation to contribute to universal service funding.

services. Finally, a telecommunications carrier which provides the universal service package through a combination of unbundled network elements and its own facilities should receive support for the portion provided through its own facilities. Incumbent LECs are being forced, in many markets, to offer unbundled elements to competitors at prices that are substantially below costs. In this situation, allowing the purchaser to also obtain universal service funding in addition to paying non-compensatory prices for the elements exacerbates the problem. Indeed, the opportunity to receive universal service funding will uneconomically incent carriers to purchase unbundled elements merely to take advantage of arbitrage opportunities. This clarification is necessary to ensure that the carrier that incurs the cost of the service receives the support which, in turn, ensures competitive neutrality.

VII. RURAL TELECOMMUNICATIONS CARRIERS SHOULD RECEIVE THE SAME AMOUNT OF SUPPORT DURING THE TRANSITION THAT IS CURRENTLY RECEIVED AND SHOULD HAVE AN OPPORTUNITY FOR ADJUSTMENT UNDER CERTAIN CIRCUMSTANCES.

Telephone companies operating in Alaska and insular areas should not be required to use a proxy model at this time. These companies face circumstances unlike those encountered by other carriers and they should not be subject to any further risks.³⁵ USTA urges the Commission not to limit relief to *rural* telephone companies operating in Alaska and insular areas, but to include those companies operating in Alaska and insular areas that also serve less than two percent of the Nation's subscriber lines. Limiting this relief to rural companies excludes some of the companies which face the exact same circumstances that are noted above as the basis for

³⁵Recommended Decision at ¶ 298.

proposing the exemption from the proxy cost model. Those circumstances include extremely high shipping costs and the high risk of severe hurricane damage. The two percent standard was adopted by Congress in Section 251(f)(2) of the Act to recognize the particular challenges smaller incumbent LECs must face. The Congressional standard is appropriate and should be used in this case.

USTA agrees that other rural carriers should not be *required* to move to a proxy model to determine costs at this time. However, the transitional mechanism recommended by the Joint Board may have several detrimental, albeit unintended, consequences which require Commission clarification.

First, the Commission should not require any rural carrier to utilize a proxy cost model at any time unless the proxy reflects actual costs. At this time, as the Joint Board acknowledges, there is no proxy model which accommodates the diverse needs of rural telephone companies. The only reasonable way to develop a proxy for rural carriers which would meet the requirements of the Act would be to allow rural carriers to utilize specific inputs which reflect their individual characteristics. Given the diversity of rural telephone companies, an alternative approach may be to permit rural carriers to use the proxy to distribute actual costs. Of course, as the Joint Board recommended, rural carriers should be permitted to utilize a proxy cost model upon request. In addition, the special circumstances of average schedule companies must be accounted for when considering the post-transition quantification of universal services costs.

Second, there is no reason to freeze the amount of support which any rural carriers, including those serving Alaska and insular areas, would receive until they begin the transition to a proxy cost model. Since the Commission is requiring that non-rural carriers immediately move

to a proxy-based determination of costs, the size of the current universal service mechanisms which rural carriers will continue to participate in will be significantly reduced. There is no evidence that rural carriers will not continue to operate efficiently without freezing the amount of support.

Freezing the amount of support could also have severe, detrimental impacts. For example, it will provide a disincentive to upgrade current facilities which could affect service quality and could undermine the ability of rural carriers to make the infrastructure improvements necessary to provide universal service. It could also lead to a mismatch between expenses and investment. In addition, freezing the amount of support would unnecessarily complicate the decision-making process for companies considering converting from average schedule settlements to cost.

Freezing the amount of support, even on a per line basis, is not necessary and should not be adopted. As USTA proposed, rural carriers should continue to receive the same amount of support they would receive under the current universal service mechanisms until they request to utilize a proxy or until the transition period begins. This is the only way that the Commission will be able to ensure that universal service support is sufficient, as required by the Act.

Third, if the Commission adopts the Joint Board recommendation, the calculation proposed by the Joint Board will not provide rural carriers with the same amount of support which they currently receive. As recommended by the Joint Board, rural carriers will only receive support for single line, primary residence and single line business. These carriers will now be required to contribute to the universal service support mechanism, the net impact of which may reduce their amount of support. Any loss in support will threaten the maintenance of

universal service and could severely deter infrastructure improvements. Several modifications are necessary. USTA's proposals to address the problems with the proposed calculations for rural carriers without investment upgrades, rural carriers with investment upgrades and rural carriers acquiring a new study area are attached to these comments.

USF should be calculated using 1996 costs just as the Joint Board proposed to use to determine the amount of weighted DEM and LTS support. These are the most recent costs which will be available as the support amounts are converted to a per line basis. The use of 1996 costs for USF will at least reduce the lag between costs incurred in 1995 and the ability of rural carriers to reflect these costs in the calculation of universal service support. The National Exchange Carriers Association (NECA), which will continue to administer the current universal service mechanisms, should collect data from all incumbent LECs and determine the national average cost per loop and individual study area loop cost using 1996 data pursuant to the current methodology. NECA would use the current expense adjustment calculation to develop the study area support amount. The study area support would be divided by supportable loops to determine the frozen per loop amount. The frozen per loop amount could be portable for all eligible telecommunications carriers, although only for those carriers' single line, primary residence and single line business lines.

The frozen per loop amount for weighted DEM and LTS would be calculated in the same way using supportable loops. The Joint Board recommended methodology for assigning LTS to individual study areas will produce anomalous results. Using the proposed methodology will result in LTS amounts being assigned to individual study areas based on the relative size of their revenue requirement without regard to revenues received from other sources (i.e., SLC and

CCL). USTA proposes that the Commission adopt a more equitable approach to calculate LTS. Thus, the LTS support requirement would be determined by using year-end 1996 common line revenue requirement, including the rate of return less end user charges and carrier common line revenues. The resultant amount would provide each study area's LTS requirement. This total LTS support requirement would then be divided by supportable loops to determine the frozen per loop amount.

Finally, rural carriers should also be permitted to update their costs whenever exchanges are acquired or a major upgrade in facilities is completed in order to ensure that their support amount is sufficient. This includes those acquisitions which are currently underway, but which may not be completed in calendar year 1995. The Commission has approved, or will soon approve, a number of transactions resulting in the transfer of study areas. Utilizing 1996 as the basis for calculating support, as noted earlier, will at least provide an opportunity to recognize approved transactions in the future calculations of universal service support. This is required to ensure that support is sufficient. Permitting the recognition of these legitimate costs will not lead to abuse or gamesmanship since state and federal approval of these transactions is necessary to ensure that they serve the public interest.

Under the Joint Board proposal for frozen support, any rural average schedule company converting to cost subsequent to 1995 would not have universal service support available. Average schedule companies which convert to cost should be permitted to elect the proxy model or to use current costs as the basis for the frozen support amount. Average schedule companies which remain on average schedules should also be permitted to elect a cost proxy model or use the frozen embedded cost amount as calculated under USTA's proposal. NECA should be

directed to provide the appropriate support amounts to the fund administrator.

VIII. THE DEFINITION OF UNIVERSAL SERVICE SHOULD INCLUDE ALL LINES TO MINIMIZE ADMINISTRATIVE BURDENS.

The Joint Board is recommending that the extent of universal service support be limited to single line/primary residence and single line business.³⁶ Such a limitation will create such administrative burdens that any possible benefits to limiting support will be completely negated. There is no practical or efficient way to identify such lines in order to implement this proposal and certainly no feasible way to police such a limitation if it was adopted.

The Joint Board indicates that secondary lines could be identified through billing information. Billing information will not always provide this data. A billing address with multiple lines may indicate a child paying for the primary line of an elderly parent. Mis-identification could prevent some lines from receiving necessary support. Even if billing information is helpful, it does not alleviate the concern that it would be administratively burdensome and costly to determine which lines are primary and which are secondary.

In addition, if carriers cannot receive support for secondary lines and residences, incumbent LECs must be permitted pricing flexibility to ensure that the costs of these lines can be fully recovered.

This recommendation also raises questions as to which carrier receives support if different carriers each provide a line to a residence and could lead to gaming by carriers and customers. USTA believes that the burdens strongly outweigh any benefits in this instance. All

³⁶Recommended Decision at ¶ 92.

lines should be included in the definition of universal service.

USTA also urges the Commission to include white page directory listing within the defined universal service package. This service traditionally has been associated with the provision of local service. It certainly meets the statutory requirements for inclusion in the definition. The public interest is served by making this information available to consumers. It should be included in the universal service package.

USTA supports the Joint Board recommendation to include access to interexchange service in the definition of universal service.

IX. ALL CARRIERS SHOULD HAVE AN OPPORTUNITY TO DISAGGREGATE SUPPORT TO SMALLER GEOGRAPHIC AREAS.

All carriers, including rural LECs, should have the flexibility to receive universal service support for geographic areas which are smaller than their serving areas.³⁷ This will permit better targeting of support to high cost areas. However, there is the possibility that strong incentives for arbitrage will exist if the degree of deaveraging for purposes of universal service support is greater than the degree of deaveraging for rates for unbundled network elements. If the deaveraging is not synchronized, an eligible telecommunications carrier could purchase unbundled network elements at an average price and collect universal service support that reflects the high cost of the incumbent LEC. The Commission should permit carriers to use zones, as was discussed in the Interconnection Order, to reduce the opportunities for arbitrage.

³⁷Recommended Decision at ¶ 178.

X. IMPLEMENTATION ISSUES MUST BE ADDRESSED BEFORE THE NEW UNIVERSAL SERVICE MECHANISM IS IMPLEMENTED.

Silence by the Joint Board on several important issues will make implementation of the new universal service mechanisms problematic. First, the Joint Board has not addressed which rates should be reduced to the extent that explicit funding replaces the implicit support contained in incumbent LEC prices. As noted above, USTA has recommended that interstate and intrastate prices should be reduced on a revenue neutral basis to offset explicit support received from the new federal funding mechanism. Examples of services for which prices could be reduced include, in the interstate jurisdiction, switched access prices (CCL), and switching prices (weighted DEM), and, in the intrastate jurisdiction, vertical service prices, business line prices, intraLATA toll prices and switched access prices. Federal universal service support should be appropriately jurisdictionalized interstate and intrastate to determine which prices to lower. However, this should be done in a manner which gives the incumbent LECs the maximum flexibility to respond to competition.

In addition, the funding mechanism to implement the new provisions for schools, libraries and health care providers must be determined to avoid an accounting/revenue lag. For example, reimbursement must be specified in order to avoid paying taxes on unrealized income. Given the specific time frames to implement these new programs recommended by the Joint Board, it is imperative that all these implementation issues be considered with appropriate opportunity for comment.

XI. THE IMPACT OF THE SIGNIFICANT CHANGES IN THE PROVISION OF LOW INCOME ASSISTANCE MUST BE CONSIDERED.

The Joint Board has recommended significant changes in the provision of low income assistance without clear evidence in the record that the full impact of those changes was even considered. The Commission must not adopt the Joint Board recommendations in this regard until such deficiencies are resolved and the problems which will be discussed below have also been resolved. For example, the impact of the new Lifeline rate and the inclusion of all states on the size of the fund is not discussed. The Commission should require states to set means-tested eligibility criteria, as opposed to merely encouraging states to establish such criteria, and should prohibit states from instituting self-certification. The federal eligibility floor should also be strictly imposed on the states.

The Joint Board recommendation to require the prohibition of disconnecting local service for non-payment of toll is not warranted. Incumbent LECs have described the problems raised by this, as well as some of the other low income proposals, in other Commission dockets. For example, in the states that have prohibited telephone companies from disconnecting local service for non-payment of toll charges, uncollectible debts have increased significantly.³⁸ The consequences of such an increase on a nationwide basis should be analyzed and adverse results avoided before such a recommendation is adopted.

Further, there is no correlation between voluntary toll blocking and security deposits. Acceptance of toll blocking does not provide a company with any protection regarding a

³⁸See, Comments of USTA, Amendment of the Commission's Rules and Policies to Increase Subscribership and Usage of the Public Switched Network, CC Docket No. 95-115, September 27, 1995 at 7-9.

customer with a problematic credit history. Deposit requirements are necessary to protect companies from offering unlimited credit to persons that have demonstrated they cannot or will not handle previously incurred charges. Toll blocking may prevent an unpaid balance from increasing, but it provides no incentive for customers to pay outstanding balances. The Commission should not prohibit carriers from requiring service deposits. In addition, the Commission must address the billing problems which are associated with toll blocking and toll limitation before it adopts the Joint Board recommendation.

XII. FUNDING FOR SCHOOLS AND LIBRARIES MUST BE EFFICIENT AND TARGETED.

A. Internet Access and Inside Wire Should Not Be Eligible for Discounts.

With regard to eligible telecommunications services, USTA supports the Joint Board's recommendation to allow schools and libraries to receive discounts on all commercially available telecommunications services. This is a reasonable approach that provides schools and libraries with maximum flexibility to select the services they need and avoids favoring a particular service or technology.

USTA, however, disagrees with the Joint Board's recommendation to include internal connections within the scope of services eligible for discount. In addition, the recommendation seems to blur the line between the telecommunications services used to access on-line services (such as the Internet) and the enhanced services themselves. These are not telecommunications services and thus are outside of the scope of universal service support mechanisms. The Joint Board itself points out that "The discounts mandated under section 254(h)(1)(B) . . . are limited

to the provision of services by telecommunications carriers.³⁹ Congressman Jack Fields, Chairman of the Subcommittee on Telecommunications of the House of Representatives' Committee on Commerce, stated, "The letter of the law is clear that the federal universal service fund can only support subsidies for *services*, not plant and equipment...More importantly, schools, hospitals, and libraries across America are today being wired for advanced telecommunications services. This wiring is occurring not because of a federal universal service fund but as the result of private sector initiatives and programs sponsored by state and local government. The goals of the Telecommunications Act of 1996 are being met without federal intervention."⁴⁰

Commissioner Chong raised similar concerns in her separate statement. "We have to recognize the historical regulatory differences between internal connections and services. Although most telecommunications services continue to be regulated at the state and local level, internal connections have been unregulated for a number of years and the market for such connections is highly competitive. The provision of deep discounts for these unregulated facilities may unintentionally skew the efficient working of the market by inducing a library or school to choose a less efficient internal connection alternative. I am also concerned that inclusion of internal connections will cause the fund to balloon to a level much higher than may be fiscally prudent, at the expense of all consumers of telecommunications services...I point out that Section 254 does not *mandate* that discounts be provided for internal connections."⁴¹

³⁹Recommended Decision at ¶ 460.

⁴⁰Representative Jack Fields, Letter to Chairman Hundt, October 17, 1996.

⁴¹Separate Statement of FCC Commissioner Rachelle B. Chong at 5-10.

B. The Discounts Should Ensure that the Funds are Utilized in the Most Efficient Manner.

In general, USTA believes that the recommended discount structure is a workable one that should increase the use of telecommunications in schools and libraries. However, given the level of discounts recommended by the Joint Board (20 to 90 percent), care must be taken to ensure that discount assignments do in fact result in efficient and effective use of limited resources. The Joint Board's rationale for recommending that the existing Federal school lunch program be used to determine a school/libraries level of economic disadvantage appears reasonable. Using an existing and readily available metric has the advantage of being both simple and relatively inexpensive to administer. However, the Commission should seek guidance from the education community and others more familiar with these issues before making a final decision.

The Joint Board also recommends that discounts be adjusted according to the cost of providing service in the area where the school/library is located and asks for input on how to determine high cost areas. The Commission should use the same methodology that it develops for the high-cost portion of the funding mechanisms for core universal services. The Joint Board recommended and work is underway to develop a proxy cost model for this purpose. There is no need to develop a separate model or methodology for the schools/library portion of universal service.

A discount methodology or matrix based on clear and readily available inputs, such as the Joint Board has recommended, should be simple to administer. USTA suggests that initial discount calculations and assignments to all schools be made by a Federal level entity, perhaps the Fund Administrator, as soon as is feasible. Discount level assignments should then be

provided to individual schools as well as posted on the Fund Administrator's website so that this information is available to all interested parties. Calculating and assigning discounts to all schools/libraries immediately ensures that there will be no delay in receiving the benefits of this new program.

C. The Pre-Discount Price Should Be Clarified.

The Joint Board was correct when it identified the "pre-discount" price as among the most significant features of its recommendation for both carriers and their customers (schools/libraries). While it is questionable as to whether the Act requires the Commission to delineate a pre-discount price, USTA acknowledges the Joint Board's motives in trying to ensure that schools/libraries benefit from competitive market-based pricing. The Joint Board wisely rejected proposals to use cost-based methodologies such as TSLRIC/TELRIC as the basis for pre-discount prices. The "lowest corresponding price" (LCP) or "lowest price charged to similarly situated non-residential customers for similar services" is a more flexible and market-based solution.

The Joint Board's recommendation, however, is not clear on numerous details of how the LCP concept would actually be implemented. If the Commission attempts to implement the LCP recommendation, given the importance of this issue, both schools/libraries and telecommunications providers would benefit from additional clarification, and believe the Commission should seek additional, more specific comments on this new concept.

USTA interprets the Joint Board's recommendation to mean that each carrier is obligated to offer services at, or below, the lowest corresponding price it is currently charging one of its own similarly situated customers. This is the only interpretation that is feasible, since

carriers are not in a position to know the LCP of another carrier. (This is especially true in an increasingly competitive, non-tariffed environment.) The LCP that is relevant at the time that a request for bid is made should be used to establish the bid price. Once a contract is signed at the agreed upon price, that price remains in effect for the term of the contract. When the contract is renegotiated, a new price would be based upon a new LCP that reflects the current conditions of the market. Carriers should be encouraged to look only to contracts or arrangements entered into within the twelve months preceding the request for bids in order to identify the LCP. This would help ensure that schools/libraries have access to prices that reflect the most current market and technologies, as well as being administratively more efficient for carriers.

The Commission must also clarify how the LCP concept is intended to operate in “non-competitive” markets and how the obligations of carriers of last resort mesh with the new universal service requirements.

D. Carriers Should Not Be Responsible for Policing the Activities of Consortia.

The Joint Board recommends that schools and libraries be allowed to enter into consortia with other non-eligible organizations in their communities for the purposes of purchasing telecommunications services. The Joint Board acknowledges that ensuring that non-eligible entities do not benefit from universal service discounts will pose significant difficulties and recommends that carriers be required to keep detailed records to ensure that costs and discounts are allocated correctly. USTA strongly disagrees with the Joint Board’s suggestion that carriers should be responsible for policing proper allocation. The consortium itself, as a result of its decision to combine eligible and non-eligible entities, is the entity that must be held responsible and liable for certifying the appropriate usage of its members. In other words, the consortium, as

the customer, should be given the same responsibility to self-certify its compliance with universal service requirements as individual schools/libraries.

XIII. SUPPORT FOR RURAL HEALTH CARE PROVIDERS SHOULD BE TARGETED.

A. Only Necessary Services Should be Supported.

Section 254(h)(1)(a) states that the scope of universal service support for qualified rural health care providers should only be for those “telecommunications services that are necessary for the provision of health care services in a State.” By its very wording, the statute recognizes a distinction and, thus, so should the Commission, between telecommunications services that are “necessary” and telecommunications services that are “desirable” for the provision of health care. To be considered a “necessary” telecommunications service, the requested service should be commercially available and deployed within a carrier’s network, and subscribed to by a majority of urban health care providers. USTA endorses the recommendation by the Health Care Advisory Committee and the Joint Board that these necessary telecommunications services should be limited to those supporting a capacity of up to and including 1.544 Mbps speed or its equivalent. However, additional criteria or guidelines must be developed to define what is a “necessary” telecommunications service. There may be many worthwhile telecommunications services supporting health care, that does not mean all these telecommunications services must, or should be, funded through universal service. Only those services which are deemed to be “necessary” should be supported.

Likewise, a bona fide request should include verifiable plans by the rural health care provider that it has considered and is able to utilize all related components of the

telecommunication service to make the health care service function appropriately. For example, in order to qualify as a bona fide request, and thus be funded through universal service, the health care provider must have the necessary internal connections and customer premises equipment to utilize the requested telecommunications service.

B. Comparable Rates Must Be Clarified.

The statute calls for comparable rates, not comparable prices. Therefore, a qualified rural health care provider may not necessarily pay the same total price as an urban health care provider for those telecommunications services that are distance sensitive services or usage sensitive. Instead, rural health care providers would pay for those services based on comparable rates. The fact that these services may involve different distances from the serving equipment, or that one customer uses a service for longer or shorter time periods should not be a factor. In fact, many rates, both distance sensitive and usage sensitive, are averaged, and therefore are the same for both the rural and urban health care provider. Specifically, toll-free access to Internet should not be supported by the Universal Service Fund.

USTA assumes that the comparable rate would be the rate that the carrier provides to its own customers in the nearest urban area. For carriers not providing similar service in an urban area it would appear that the State Commission must decide what rate is considered to be a comparable rate.

C. The Marketplace Should Determine Network Modernization Needs.

Finally, USTA expects demand for telecommunications services from rural health care providers to be stimulated by the Act's provision of universal service support of comparable rural

versus urban rates. This natural marketplace characteristic will incent telecommunications carriers to develop appropriate facilities to serve these customers, and likely will also create the market dynamics necessary to provide these same services to entire rural communities. Under these natural conditions, the most efficient technology to provide a service would normally be the one that the marketplace will chose. USTA expects that advances in marketplace demand and competition will ensure that rural communities will have access to a technologically advanced network in an efficient and effective manner.

XIV. CONCLUSION.

The Commission must carefully analyze the issues raised herein before reaching a final decision regarding the Recommended Decision of the Joint Board. There are too many instances where the recommendations fail to meet the requirements of the statute that the support mechanisms be specific, predictable and sufficient; that the contributions be assessed on an equitable and non-discriminatory basis; and that the rules be applied in a competitively neutral manner. Further, the current obligations of incumbent LECs must be considered to avoid any risk of a regulatory taking. These comments are provided to assist in ensuring that the new universal service funding mechanism is consistent with the statute. USTA strongly urges the Commission to adopt USTA's proposals to establish a mechanism that will balance the interests

of competition with universal service and that can be relied upon by customers to ensure the availability of affordable service throughout the Nation.

Respectfully submitted,

UNITED STATES TELEPHONE ASSOCIATION

By: _____

Its Attorneys:

Mary McDermott
Linda Kent
Charles D. Cosson
Keith Townsend

1401 H Street, NW, Suite 600
Washington, D.C. 20005
(202) 326-7248

December 19, 1996